

**ESTABLISHING THE  
NATIONAL NUCLEAR SECURITY  
ADMINISTRATION:**  
*A YEAR OF OBSTACLES AND  
OPPORTUNITIES*

An assessment by the  
Special Oversight Panel on Department of Energy Reorganization,  
Committee on Armed Services  
U.S. House of Representatives

October 13, 2000

## EXECUTIVE SUMMARY

One year ago, on October 5, 1999, the President signed into law the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65). Title 32 of the Act constituted a major component of Congress's ongoing attempt to correct long-standing and well-documented security and management problems in the Nation's defense nuclear complex. It established the National Nuclear Security Administration (NNSA) as a semi-autonomous entity within the Department of Energy (DOE) and transferred responsibility for managing the complex from DOE to the NNSA. Congress took this action to provide the Nation's defense nuclear program with clear lines of authority and accountability, as recommended by the President's Foreign Intelligence Advisory Board in light of DOE's long-standing failure to rectify persistent management deficiencies.

The House Armed Services Committee, through its Special Oversight Panel on DOE Reorganization, has closely monitored DOE's progress in establishing the NNSA. In February 2000, it found that DOE's leadership had erected obstacles aimed at blocking Title 32's full implementation. These obstacles included assigning non-NNSA DOE officials to serve concurrently in key NNSA positions (a practice known as "dual-hatting") in clear violation of the intent of Title 32. For the most part, DOE also failed to comply with Title 32's requirements for detailed NNSA budget submissions. As a result, the NNSA was little more than a paper organization, bereft of the leadership, structure, and degree of semi-autonomy intended by Congress.

However, recent developments have now provided the NNSA with the oppor-

tunity to exercise a more independent role in managing the complex. In June 2000, news of another security failure within the complex led DOE to respond to congressional objections regarding dual-hatting and prompted the Senate to confirm

- reassess the NNSA's organizational structure,

- develop an integrated security improvement program, and

- improve NNSA management processes.

The Panel anticipates that General Gordon will take further steps to accelerate needed reforms in each of these areas, such as :

- developing an integrated set of policies and practices tailored to the NNSA's specific needs;

- implementing a comprehensive security action plan that will promote an integrated security management program at NNSA;

- completing a plan for streamlining NNSA lines of authority

by realigning its headquarters and field assets; and

- submitting (1) a plan to improve personnel management and continuity to include the use of hiring authorities provided in Title 32 and (2) the first of a series of detailed budget proposals and multi-year plans that comply fully with Title 32.

The House Armed Services Committee's Special Panel on DOE Reorganization stands ready to support General Gordon and the NNSA in ensuring the renewed vitality of the nuclear weapons complex. While the Panel recognizes that lasting change of this magnitude will take time, it is imperative that the NNSA continue to show improvement in these key areas. The Committee plans to exercise vigorously its oversight authority and to continue to monitor closely the NNSA's progress in ensuring that the Nation has a safe, viable, and dependable defense nuclear complex capable of meeting the challenges of the 21st century.

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**"The Panel is cautiously optimistic that the NNSA will now have the opportunity to improve the management, organizational, and programmatic structures it has inherited from DOE."**

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General John Gordon as the NNSA's first Administrator. In August, the Secretary of Energy appointed an NNSA official to replace DOE's dual-hatted security "czar" as the NNSA chief of defense nuclear security. By the end of September, DOE's leadership had approved several additional steps that – if fully implemented – should virtually eliminate the threat posed by dual-hatting to the NNSA's semi-autonomy.

In light of these events, the Panel is cautiously optimistic that the NNSA will now have the opportunity to significantly improve the management, organizational, and programmatic structures it has inherited from DOE. Its optimism is also founded on General Gordon's July 11 testimony before the Panel, during which he described his plans to:

- fully realize NNSA's mandated authority and semi-autonomy, as intended under Title 32,

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## BACKGROUND

The Department of Energy's (DOE) management of the defense nuclear complex has suffered from serious and persistent deficiencies. In 1999 Congress mandated the creation of the National Nuclear Security Administration (NNSA) – a semi-autonomous organization within DOE that would be responsible for managing the complex effectively and securely. While DOE initially attempted to curb the NNSA's autonomy, more recent developments have given rise to new hopes that the NNSA is now poised to focus significant energy on the problems facing the defense nuclear complex.

### President's Advisory Board Called for a Semi-Autonomous Nuclear Agency

A series of independent assessments have documented DOE's difficulties in overseeing the Nation's defense nuclear

complex. In 1999, a Special Investigative Panel of the President's Foreign Intelligence Advisory Board, chaired by former Senator Warren Rudman, determined that DOE's management of the nuclear laboratories, while representing "science at its best," also embodied "security at its worst,"<sup>1</sup> due to "organizational disarray, managerial neglect, and...[a] culture of arrogance" that is "thoroughly saturated with cynicism and disregard for authority." Citing DOE's convoluted reporting channels, endemic lack of accountability, internecine headquarters-field office relationships, and resistance to change, the Board concluded that DOE is "a dysfunctional bureaucracy [that is] incapable of reforming itself."

The Board therefore urged Congress to create a new organization to oversee the Nation's defense nuclear complex and to insulate it from DOE. The Board stressed that the new organization, whether estab-

lished as an independent agency or a semi-autonomous entity within DOE, should have "a clear mission, streamlined bureaucracy, ...drastically simplified lines of authority and accountability," and no ties with DOE's regional and field offices. Its director – a technically qualified individual appointed by the President for a fixed term – would, in the case of a semi-autonomous entity, report directly to the Secretary of Energy. Except for shared research and development contracting, the new entity proposed by the Board would otherwise be "entirely separated from" and "have no...bureaucratic ties to" DOE.<sup>2</sup>

### Congress Required the Establishment of a Semi-Autonomous NNSA

Consistent with many of the Board's recommendations, Congress subsequently approved Title 32 of the National Defense



*National Nuclear Defense Facilities reporting to the NNSA Deputy Administrator for Defense Programs.*

<sup>1</sup> Science at its Best, Security at its Worst: A Report on Security Problems at the U.S. Department of Energy, prepared by a special investigative panel of the President's Foreign Intelligence Advisory Board, June 1999. ([http://www.whitehouse.gov/media/pdf/pfiab\\_report.pdf](http://www.whitehouse.gov/media/pdf/pfiab_report.pdf))

<sup>2</sup> Over a year later, a second panel reached a similar conclusion regarding a second security failure. In a September 2000 report to the President (Science and Security in the Service of the Nation: A Review of the Security Incident Involving Classified Hard Drives at Los Alamos National Laboratory), former Senator Howard Baker and former Representative Lee Hamilton found that confused DOE lines of command and communications had contributed to the failure and recommended strengthening the NNSA within DOE.

Authorization Act for Fiscal Year 2000 (Public Law 106-65).<sup>3</sup> Title 32 directed that “a separately organized agency” be established within DOE by March 1, 2000. It specified that the mission of the National Nuclear Security Administration is to:

- enhance U.S. national security through the military application of nuclear energy and by maintaining and enhancing the nuclear stockpile,
- provide safe and effective naval nuclear propulsion systems,
- reduce dangers from weapons of mass destruction while promoting international nuclear safety and non-proliferation, and
- support U.S. leadership in science and technology.

Title 32 specified that the NNSA is to be led by an Administrator for Nuclear Security, who also holds the title of Under Secretary of Energy for Nuclear Security. It further established the posts of NNSA Deputy Administrators for Defense Programs, Naval Reactors, and Defense Nuclear Non-Proliferation. To ensure that the NNSA would be more effective in fulfilling its missions than DOE had been, Title 32 contains provisions aimed at insulating the NNSA from DOE’s management culture and providing it with clear authority over the nuclear complex. For example, Title 32:

- requires the Administrator to report directly to the Secretary of Energy,
- bars DOE officials other than the Secretary (and the Deputy Secretary, if so desig-

nated by the Secretary) from directing any NNSA officials or staff,

- specifies that the Secretary or the Deputy Secretary must act through the Administrator in providing direction to the NNSA,
- prohibits the Secretary from delegating his authority over the Administrator to anyone in DOE other than the Deputy Secretary,

**“[Executive branch] actions unnecessarily delayed Title 32’s full implementation. Instead, they helped perpetuate a ‘paper’ NNSA...”**

- requires the heads of all U.S. nuclear national security laboratories and production facilities to report to the NNSA Deputy Administrator for Defense Programs, and
- authorizes the Administrator to establish NNSA-specific practices, subject to the disapproval of the Secretary.

Title 32 also directs that the NNSA should have a General Counsel, a Chief of Defense Nuclear Security, a Chief of Defense Nuclear Counterintelligence, and its own personnel, legislative and public affairs staff. It authorizes the Administrator to establish and set compensation for up to 300 new scientific, technical, and engineering positions. Title 32 also requires DOE to submit

detailed, multiyear NNSA budgets that use funds available for obligation for a limited number of years.

### DOE Obstructed Full Implementation of Title 32

Unfortunately, for some months, executive branch implementation of Title 32 constrained NNSA autonomy and authority. After signing the Act on October 5, 1999, the President announced that the Secretary of Energy would perform all duties and functions of the Under Secretary for Nuclear Security “until further notice”<sup>4</sup> and authorized him to assign DOE officials to concurrent offices within the NNSA. The Secretary filled 18 NNSA positions with DOE officials and suggested that he would continue such “dual hatting” indefinitely. This practice served to minimize the NNSA’s autonomy, blur lines of authority, and overburden individual officials.

DOE also tried to integrate the NNSA into the Department’s much-criticized organizational structures and management practices and failed to take advantage of the NNSA’s establishment to reform these structures and practices. DOE’s budget submission for fiscal year 2001 failed to comply with Title 32’s requirements for detailed NNSA budgets, multiyear plans, and limits on the number of years that funds are available for obligation.<sup>5</sup>

These actions unnecessarily delayed Title 32’s full implementation. Instead, they helped perpetuate a “paper” NNSA that was unable to effect needed reforms in the complex’s operations.

<sup>3</sup> Title 32 is reproduced in Department of Energy National Nuclear Security Implementation Plan: An Assessment by the House Armed Services Committee Special Panel on Department of Energy Reorganization, which may be viewed at <http://www.house.gov/hasc/Publications/106thCongress/doerpt.pdf>.

<sup>4</sup> The process of nominating and confirming an NNSA Administrator progressed slowly after October 5, 1999. In January 2000, the Secretary of Energy named a panel to identify potential nominees. On March 2, he informed the House Armed Services Committee that the President would nominate General John Gordon, the then-Deputy Director of the Central Intelligence Agency. The White House announced the nomination on May 4, 2000. The Senate Armed Services Committee acted on the nomination on May 24, 2000. Efforts to ban “dual-hatting” prompted one senator to block the nomination until June 14, 2000.

<sup>5</sup> DOE’s failure to fully implement Title 32 is described in greater detail in Appendix B.

# NEW PROSPECTS FOR PROGRESS AT THE NNSA

In June 2000, news of another security breach within the complex prompted the Senate to confirm General John Gordon to be the NNSA's first Administrator. The news also compelled DOE to take additional steps toward fully implementing Title 32. The Secretary, facing renewed criticism in Congress for the breach and for having impeded the NNSA's autonomy, retreated from his "dual-hatting" policy on June 21 by announcing that he would (1) defer to General Gordon regarding "dual-hatting" and (2) not oppose legislation banning the practice at the NNSA.<sup>6</sup>

## General Gordon's Plans for the NNSA

The Panel is now hopeful that General Gordon's confirmation and the impending end of "dual-hatting" signal the beginning of the NNSA's emergence as an organization capable of effectively managing the nuclear complex. The Panel's optimism is bolstered by his forthright and candid testimony before the Panel on July 11, 2000. Pledging to restore trust in the management of the nuclear defense complex, General Gordon discussed his plans to enhance NNSA's autonomy, security, organizational clarity, and overall management.

## Enhancing NNSA Semi-Autonomy and Authority

General Gordon assured the Panel that he "absolutely support[s] the need for NNSA" and that the NNSA's most important role could be as a full-time advocate for the mission of the defense nuclear complex, which he believes has lost cohesion in recent years. He stated that dual-hatted DOE officials would be replaced within

"not very many months, ...hopefully not very many weeks." However, he cautioned, establishing the NNSA as a truly semi-autonomous entity would also require developing a single, interconnected set of policies and principles that would permeate the entire NNSA and minimize outside inputs.

## Upgrading Security

General Gordon pledged that he would begin work on improving secu-

comes from...within the people who are doing the work."

## Clarifying Lines of Authority

General Gordon acknowledged that the defense nuclear complex is widely viewed as suffering from confused reporting structures and a lack of accountability. He promised the Panel that he would assess these and other matters, based on a first-hand review of NNSA field operations, and that he would foster clear chains of NNSA authority, control, responsibility and accountability. General Gordon also suggested that a flat and focused organizational structure – similar to that employed by NNSA's Naval Reactors Office – could serve as a model for reforming the oft-criticized management of NNSA's defense nuclear program.

## Improving Management

General Gordon also acknowledged that the defense nuclear complex suffers from a range of management problems. The complex, he informed the Panel, is "not attracting...the quantity of the best talent that we need for continued success...is not very efficient, [and] hasn't adopted the most modern business practices." He criticized DOE's current budgeting process by stating "I can't do business this way and I don't think you can either...[there is] a crying need for a better multiyear planning, programming and budgeting plan...." He told the Panel that he would instill "sound management, leadership, and a fiscal footing to sharpen the efficiency of the enterprise [and] strengthen project management." Accordingly, he pledged (1) to "start as soon as practicable" on a multiyear budget and program plan, (2) draw upon the project management exper-

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ity immediately and stated that he had already asked NNSA staff to develop an integrated security management program. He stressed that the corrective actions that have been recently taken should be "set up in a cohesive whole – to build on them and better inculcate security into the system at all levels." Echoing the comments of the President's Foreign Intelligence Advisory Board regarding the culture of the complex, General Gordon stated that the NNSA would have to "make [security] a responsibility that

<sup>6</sup> Congress subsequently included a ban on dual hatting in legislation that would authorize funding for national defense activities during fiscal year 2001 (see House Conference Report 106-945).



tise of NNSA's Naval Reactors Office, and (3) determine how the NNSA could utilize Title 32's hiring authorities.

### Next Steps for the NNSA

The Panel is encouraged by General Gordon's qualifications,<sup>7</sup> his commitment to the NNSA's success, and the recent replacement of several dual-hatted DOE officials. It looks forward to continued progress in four key areas.

#### Realization of NNSA Semi-Autonomy and Authority

A fundamental principle of Title 32 is to provide the NNSA with the degree of autonomy it needs to improve the management of the nuclear weapons complex. The Panel notes that former Senator Howard Baker and former Representative Lee Hamilton, in their recent report on the underlying causes of a security breach at one of the national laboratories, reaffirmed this principle by calling for the reinforcement of "the position of the NNSA in DOE and the authority of the NNSA Administrator" to facilitate the exercise of strong, unified leadership.<sup>8</sup>

As of today, DOE's leadership has approved steps that – if fully implemented – should virtually eliminate the threat posed by dual-hatting to the NNSA's semi-autonomy. The Panel anticipates that DOE will fully implement these steps as soon as possible. However, as General Gordon noted in his testimony before the Panel, realizing the NNSA's semi-autonomy will require more than eliminating dual-hatting. The Panel agrees that the NNSA should also develop an integrated set of policies and practices tailored to the NNSA's specific needs. It urges General Gordon to undertake this task as soon as possible regarding all NNSA policies, standards, and practices, especially those aimed at ensuring

- efficient and effective planning, programming, budgeting, and procurement, as mandated by Title 32;

- safe operation of NNSA facilities; and
- secure storage and handling of sensitive materials and information.

### Improved Security

Past security breaches prompted the President's Foreign Intelligence Advisory Board to recommend the creation of the NNSA in 1999. The recent – and as yet unexplained – loss and recovery of computer hard drives containing sensitive nuclear weapons data underscores yet again the urgent need to address the root causes of such security failures, including the confused lines of command identified in the Baker-Hamilton report. In their report, former Senator Baker and former Representative Hamilton noted that "responsibility

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**"NNSA should... reassess and realign its defense program's management structure..."**

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and authority for security [at the weapons laboratories] must be vested in the Administrator of the NNSA" and that DOE's security czar position, while well intentioned, "cannot succeed."

The Panel is thus encouraged by the naming of General Gordon's own security chief, as well as his plans to develop an integrated security management program and promote an NNSA culture in which security is an integral component. Accordingly, the Panel now urges him to expand his review of security at selected locations into a broader assessment of the adequacy of all security policies and practices employed by NNSA staff and contractors. This review should produce a plan for addressing issues identified by the assessment, with appropriate consideration of issues identified in other studies (such as the Board and Baker-Ham-

ilton reports) – particularly those involving personnel, computer, and information security. The plan should also thoroughly explain any integrated security management program that NNSA adopts. The Panel asks that General Gordon periodically inform the Committee of the plan's status and to share the completed plan with Congress.

#### Clarifying the Lines of NNSA Authority and Accountability

The Panel believes that the degree of autonomy provided to NNSA is not, in and of itself, sufficient to address the institutional problems that have frustrated past efforts to reform the complex. NNSA should use its semi-autonomy to reassess and realign its defense program's management structure and lines of authority. In doing so, General Gordon should pay particular attention to clarifying the roles and responsibilities of the headquarters and field offices.

DOE's January 2000 plan for implementing Title 32 suffered from the underlying assumption that DOE's existing organization and lines of authority would be adequate for the NNSA. The Panel believes that this assumption is unjustified because it runs counter to the findings of numerous studies and reports over the past decade. The successful implementation of the NNSA offers the best opportunity to address the consequences of years of DOE mismanagement and to serve the ultimate goal of assuring the safety, security, and reliability of this Nation's nuclear weapons and materials.

Therefore, the Panel is greatly encouraged to see that, in contrast to the DOE implementation plan's reliance on existing DOE structures, General Gordon plans to undertake a fresh and independent review of NNSA's organization. In light of Title 32's requirement that the head of each NNSA laboratory and production facility report to the NNSA's Deputy Administrator for Defense Programs, the Panel is pleased that

<sup>7</sup> Gen. Gordon has served as the Deputy Director of the Central Intelligence Agency, as an advisor to the President on the National Security Council staff, and in several key Air Force positions. A physicist, he once worked at the Sandia National Laboratories. Sandia is now overseen by the NNSA.

<sup>8</sup> Congress has taken steps to provide the first Administrator of the NNSA with a statutory three-year term.

General Gordon noted the value of flat and focused management structures. The Panel therefore looks forward to NNSA's development of a comprehensive plan for realigning NNSA defense nuclear program offices and resources in a manner that ensures clear and direct lines of authority and accountability. In anticipation of the plan's submission to Congress, it has asked the General Accounting Office to assess the NNSA's organizational structure.

### Enhancing Management Efficiency and Effectiveness

Similarly, DOE's implementation of Title 32 has suffered from the assumption that its poor management practices are adequate for the NNSA. The Panel disagrees with this assumption and applauds General Gordon's intent to improve the effectiveness and efficiency of NNSA management.

The Panel notes that DOE's own Inspector General has recently found that the nuclear weapons production infrastructure has deteriorated to the point that the Nation's effort to exercise effective stewardship over the nuclear stockpile is at risk.<sup>9</sup> The Inspector General tied this deterioration to DOE's lack of (1) a process to "fully link workload, production capacity, and budget data to nuclear weapons production facility requirements" and (2) an individual with responsibility for integrating weapons systems activities with infrastructure capabilities. Notwithstanding Title 32's requirement for a five-year NNSA budget planning cycle, the Inspector General found that DOE had not utilized the long-term plans that some of its facilities had developed because, in the words of a key DOE official, "DOE did not have long-term budgets."

The Panel believes that the Inspector General's findings confirm Congress' judgment that NNSA must establish a new, multiyear, budgeting and programming process that complies with Title 32. It fully concurs with General Gordon's observation that the NNSA "can't do business"

by relying on DOE's existing budget practices.

The Panel is therefore disappointed that DOE did not fully comply with the requirements of Title 32 concerning the NNSA's budget and financial management. Most notably, DOE failed to (1) submit a detailed future year nuclear security budget plan and (2) break down its proposed NNSA budget for fiscal year 2001 in terms of individual, dedicated program elements. Accordingly, both houses of Congress have approved legislation that would reinforce Title 32's

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**"[T]he NNSA 'can't do business' by relying on DOE's existing budget practices."**

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budget requirements and restructure the NNSA budget in terms of specific program elements. The Panel strongly urges the Administrator to ensure that the NNSA is capable of submitting annually a detailed, coherent, and executable multi-year budget that fully conforms with Title 32. By doing so, General Gordon would enhance budget discipline, provide better visibility into the defense nuclear complex's vast and diverse activities, and strengthen the NNSA's authority. He would also take a crucial step in fully realizing the NNSA's semi-autonomy.

The Panel also urges the Administrator to direct his attention toward ensuring that Title 32's requirements regarding NNSA procurement procedures are fully implemented. Title 32 established the Administrator as the NNSA's senior procurement executive. It further directed the Administrator to establish procedures to ensure NNSA conformance with the provisions of the Federal Acquisition Regulation and to provide the Congress with a report on the NNSA's plans for complying with sound financial and fiscal management policies.

DOE's response to these provisions has been disappointing. It informed Congress in January 2000 that, in general, DOE procedures would be applied to ensure NNSA compliance with the Federal Acquisition Regulation and sound financial and fiscal management policies. As noted by GAO in its testimony before the Panel, DOE's response constitutes a "minimal" response to these provisions of Title 32 and ignores evidence of weaknesses in DOE's procedures.

The Panel therefore encourages the Administrator to begin establishing the NNSA's own procedures for ensuring full compliance with the Federal Acquisition Regulation and sound financial principles, as required by Title 32. The Panel recognizes that compliance with this regulation is only one of the many issues the Administrator must deal with. Nevertheless, given that many of the NNSA's highly complex missions are accomplished by a large, diverse, and skilled contractor workforce, the Panel believes that the NNSA should commence this important undertaking as soon as feasible. NNSA should improve its contract administration structure, procedures, and staffing not merely to assure compliance with basic security and legal requirements but also to secure more efficient and effective use of the scientific, managerial and physical resources of the nuclear complex.

The Panel also urges the Administrator to prepare a comprehensive plan aimed at improving personnel management and continuity. The NNSA now relies upon an aging work force whose experience will be difficult to replace. In 1999, Congress provided the Administrator with authority for a voluntary early retirement program through September 30, 2003, and the hiring of up to 300 scientific, engineering and technical personnel without regard to civil service compensation limitations. Because the Panel has grown increasingly concerned about DOE's failure to take advantage of these authorities, it welcomes General Gordon's July 11 statement that he fully expects to employ Title 32's hiring authority.

<sup>9</sup> The report, entitled *Management of the Nuclear Weapons Production Infrastructure* (Audit Report DOE/IG-0484, September 22, 2000), may be viewed at <http://www.ig.doe.gov/pdf/ig-0484.pdf>.



## PANEL CONCLUSIONS

One year after the enactment of Title 32, the Panel believes that the NNSA now may have the opportunity to move beyond the obstacles initially erected by DOE and to begin reforming the management of the Nation's defense nuclear complex. The Panel is encouraged by the confirmation of General Gordon, who is now faced with a series of significant challenges that will require every bit

of skill, ingenuity and commitment that he and the managers of the complex can bring to bear. The members of this Panel pledge their willingness to cooperate with General Gordon in any way to achieve progress in these key areas. While the members of this Panel recognize that he cannot quickly redress twenty years of mismanagement, they remain convinced that the American people require

a viable, well-managed, and efficient defense nuclear complex. To that end, the NNSA must make sustained and verifiable progress in the areas of mission fulfillment, financial and personnel management, and security – and earn the trust and support of Congress. The Committee therefore plans to continue closely monitoring the NNSA's progress as a part of its oversight responsibilities.

## APPENDIX A: PANEL ACTIVITIES

Rep. Floyd Spence, Chairman of the House Armed Services Committee, created the Special Oversight Panel on Department of Energy (DOE) Reorganization to work with the executive branch on the timely and effective implementation of Title 32. Rep. Mac Thornberry chairs the Panel and Rep. Ellen Tauscher serves as its ranking member.

The Panel has undertaken an extensive effort to assess DOE's efforts to implement Title 32. This effort has included visits to NNSA headquarters, field offices, and contractors, as well as hearings involving witnesses from independent organizations and from DOE and NNSA. The Panel has also commissioned several studies on this topic by congressional support agencies.

In November 1999 and January 2000, Panel members and staff visited laboratories and production facilities to review preparations for transitioning to the National Nuclear Security Administration. The Panel also commissioned the first of several Congressional Research Service (CRS) legal memoranda regarding the consistency of DOE's actions with Title 32. The Panel drew upon the information yielded by these

actions in its February assessment of DOE's Title 32 implementation plan.<sup>10</sup> (Elements of the Panel's assessment are described in greater detail in Appendix B.)

The Panel began a series of hearings on March 2, 2000. At its first hearing, the Panel heard witnesses from the Center for Strategic and International Studies, CRS, and the General Accounting Office (GAO) criticize DOE's plans for implementing Title 32 as being, in GAO's words, "business as usual." Later that day, the Panel participated in a full Committee hearing, during which the Secretary of Energy, accompanied by his Deputy Secretary and Deputy General Counsel, defended DOE's actions, including the dual-hatting of key officials.

The Panel held its second oversight hearing on March 16, 2000. DOE's Deputy Secretary, Director of the Office of Management and Administration, and Deputy General Counsel defended DOE's actions in response to questions from the Panel concerning the impact of those actions on NNSA's semi-autonomy. The Acting Deputy Administrators of NNSA for Defense Programs and for Nuclear Nonpro-

liferation, and the Deputy Administrator for Naval Reactors, testified concerning their organizations' transition to NNSA.

In May 2000, Panel staff visited several DOE/NNSA offices and national laboratories in California, New Mexico and Nevada, to obtain the perspectives of agency and laboratory officials on the status of implementation. Panel staff also conducted a number of meetings with DOE and NNSA officials in Washington, D.C., prior to the visit to the field. In June, the Panel, based on the information it had gathered in Washington and in the field, asked the General Accounting Office to review several issues concerning NNSA organization and autonomy.

The Panel held its third oversight hearing on July 11, 2000, shortly after the confirmation of the first Administrator of NNSA, General John Gordon. At that hearing, the Panel queried General Gordon regarding his plans to further the NNSA's semi-autonomy within DOE. Panel members and staff subsequently employed the information that they had obtained over the past year in developing legislation to strengthen the NNSA.

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<sup>10</sup> DOE's plan may be viewed at <http://www.nnsa.doe.gov/documents/V05MMR48.pdf>. The Panel's assessment (*Department of Energy National Nuclear Security Implementation Plan: An Assessment by the House Armed Services Committee Special Panel on Department of Energy Reorganization*) may be viewed at <http://www.house.gov/hasc/Publications/106thCongress/doerpt.pdf>.

## APPENDIX B:

# DOE'S IMPLEMENTATION OF TITLE 32

For several months following Title 32's enactment, DOE's actions regarding the NNSA prompted concerns that it intended to frustrate the intent of Title 32. The Panel first explored these issues in its February 2000 assessment of DOE's NNSA implementation plan.

### Dual-Hatting

One of the concerns regarding DOE's implementation of Title 32 centered on the decision to appoint DOE officials to key NNSA positions – a practice known as “dual-hatting.” The reliance on dual hatting at NNSA was first revealed on October 5, 1999, when the President announced that the Secretary of Energy would serve as the Under Secretary for Nuclear Security and instructed him “to guide and direct all NNSA personnel” by assigning DOE officials to concurrent offices within the NNSA “to the extent permissible by law.”

The House Armed Services Committee immediately objected to these arrangements. The Chairman of the Committee noted that they served more to preserve a dysfunctional DOE bureaucracy than to advance Title 32's objective of improving management at the nuclear complex. A Congressional Research Service (CRS) legal analysis determined that dual-hatting DOE officials to Title 32-created NNSA positions would contravene Title 32's letter and intent.

Nonetheless, the Secretary tasked 18 DOE officials to serve concurrently in NNSA positions. These included key officials supporting the Administrator, such as his General Counsel, Deputy General Counsel, Chief of Defense Nuclear Counterintelligence, Chief of Defense Nuclear Security, and the senior procurement official. The Secretary also tasked three DOE field office managers to serve concurrently as NNSA field officials. For example, an NNSA contractor official – the director of the Lawrence Livermore National Laboratory

– was instructed to report to the NNSA via the dual-hatted director of DOE's Oakland Operations Office, itself under the direction of DOE's Office of Science.

DOE defended this policy in its January 2000 NNSA implementation plan. At the Panel's first oversight hearing on March 2, 2000, CRS and GAO witnesses criticized DOE's dual-hatting policy as compromising the autonomy that Congress had prescribed for the NNSA. Nonetheless, the Secretary of Energy suggested to the full Committee later that day that he might dual-hat DOE officials in NNSA indefinitely. The Secretary and DOE's dual-hatted NNSA Deputy General Counsel argued that dual-hatting was not prohibited by law and that it would take advantage of the skills and abilities of DOE officials responsible for security and counterintelligence while averting the need to request new funds or take money out of other programs to hire additional employees.

After hearing similar arguments from the Secretary and the Deputy Secretary of Energy in March 2000, the Senate Armed Services Committee and the Panel asked DOE to provide a written legal justification for dual hatting. On May 3, 2000, DOE responded that (1) Congress had repealed the only government-wide ban on dual hatting in 1964, and (2) Title 32, while containing rules of “remarkable specificity” regarding NNSA's workings within DOE, does not expressly prohibit dual-hatting at NNSA. A Panel-requested CRS analysis disagreed with DOE's conclusion, arguing that it “would not appear to either reflect the preclusiveness of the statutory structure and design with respect to direct secretarial authority over NNSA personnel, nor to give proper weight to the legislative history of Title 32...” That history, CRS observed, evinced “Congress's intention to severely limit the Secretary's direct control of the administration and management of NNSA.” CRS further concluded that Title 32's structure and design “speaks to an unusual degree

of autonomy, and it seems plain that separate duplicative offices in NNSA dictate that such offices be occupied by individuals who are not *directly* [italics in original] responsible to the authority of the Secretary as an essential element in such an intended scheme of autonomy.”

While the debate regarding the legality of dual-hatting under Title 32 continued, the Senate Armed Services Committee (SASC) approved language that would explicitly ban the practice at the NNSA. This action provoked dissenting views from some SASC members. One Senator responded to the Committee's action by placing a hold on the nomination of General John Gordon to become the first Administrator of the NNSA.

This impasse was broken on June 12, 2000, when it became widely known that staff at a DOE laboratory could not find two computer hard drives containing nuclear weapons data. On June 14, the House Armed Services Committee heard testimony from the dual-hatted head of DOE and NNSA security and other DOE officials that revealed significant flaws in DOE security procedures. On that same day, the Senate confirmed General Gordon, after the hold on his nomination was withdrawn. On June 21, the Secretary told the SASC that his dual hatting policy had been a transitional step needed to maintain continuity and that he would now support a proposed ban on dual-hatting. He also stated that he had informed General Gordon that he “would support [General Gordon] in whatever he wanted to do on the double-hatting issue.”

On July 11, 2000, General Gordon informed the Panel that dual-hatted DOE officials would be replaced within a matter of months. The first such replacement was announced one month later, when an NNSA official took over the role of NNSA chief of defense nuclear security from the head of DOE security. By the end of Septem-

ber, DOE's leadership had approved several additional steps that – if fully implemented – should virtually eliminate the threat posed by dual-hatting to the NNSA's semi-autonomy.

### Confused Lines of Authority

Although outside reviewers had previously determined that the DOE organization structure diffuses key lines of authority, DOE retained the relationships between contractors, field offices, and headquarters staff in establishing the NNSA. In some cases, NNSA contractors were required to report to NNSA officials in Washington, D.C., through dual-hatted DOE field offices. DOE officials stated in the spring of 2000 that DOE did not contemplate any further changes to the field office structure for the remainder of the current administration. They maintained that DOE reforms undertaken in April 1999 had addressed

many of the concerns raised in earlier studies. However, many NNSA and contractor personnel informed Panel staff that these reforms had had only a limited impact.

### Overly-Emphasized DOE Staff Authority Over NNSA

DOE's use of dual-hatted officials at the NNSA reinforced its excessive emphasis on DOE staff authority over the NNSA. This emphasis permeated DOE's January 2000 NNSA implementation plan, particularly with regard to DOE supervision and coordination of NNSA legal, congressional, and public affairs staff. Notwithstanding the desirability of coordination, Title 32 (1) empowers the Administrator to develop NNSA-specific policies, (2) prohibits DOE officials other than the Secretary or the Deputy Secretary from supervising NNSA staff, and (3) requires the

Secretary or Deputy Secretary to act via the Administrator in directing NNSA activities.

### Lack of Plans for Improving NNSA's Programming, Budgeting, and Work Force

DOE did not adequately address Title 32 requirements aimed at improving NNSA budgeting and programming. DOE did not make mandated changes in the formulation, content, and presentation of the NNSA budget to Congress. It also failed to take advantage of tools embedded in Title 32 to restructure the NNSA workforce. These tools include the authority to establish up to 300 positions exempt from usual civil service requirements and the authority to offer early retirement. DOE officials were unable to satisfactorily explain to Panel staff why they had not planned to use these tools.